

The Anglo-American **LAWYER** MAGAZINE



**Advocate Yoav Harris on
Shipping and Maritime Law**



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Ecclesiastical Law**



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**Should UNCTAD make an initiative to draft an
international convention to regulate the Suez Canal
operation in collaboration with the Government of Egypt?**



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EDITORIAL



The strategic importance of Suez Canal has resurfaced in the aftermath of the accident involving the mega container carrier *Ever Given*. The accident blocked billions of dollars' worth of cargo from crossing one of the busiest marine waterways, the free passage through which, has a significant global political impact. Though sovereignty of Suez Canal rests with Egypt, its importance goes beyond the sovereignty of Egypt and the operation of Suez Canal must therefore be governed by a UN supervised international convention. We believe that United Nations Conference on Trade and Development – UNCTAD must look into crafting a standard operating procedure and an international convention on the mechanism for handling navigation operations, accidents, salvage, insurance and legal procedure arising out of all issues of shipping and maritime affairs within the realm of Suez Canal under the supervision of UNCTAD. Since this is a matter that concerns the Government of Egypt, UNCTAD must initiate diplomatic discussions with the Government of Egypt immediately. This would also benefit Egypt tremendously as it gives greater transparency and a diplomatic milestone in Egypt's history.

We have posed critical questions to Attorney Yoav Harris, Managing Partner of a leading law firm in Israel, Harris & Co. He is a specialist in Shipping and Maritime Law. The importance of the shipping and maritime activities of the strategic Suez Canal was felt when mega

container carrier *Ever Given* got stuck in the Suez Canal. The area is hugely strategic and politically significant. Not only does it touch Egypt but has wider significance to the entire world in terms of its strategic importance and the collective effort to secure its free passage. Attorney Harris has provided insightful responses to our interview with him. A must reading for the shipping and maritime law practitioners.

We have had the privilege of interviewing Charles George QC the former Dean of Arches on the Ecclesiastical Law which is a specialized subject very rarely discussed in the legal parlance. Charles George QC has had 40 years practice and had closely associated with the Church of England on ecclesiastical legal issues. He has been honored with the Canterbury Cross by the Archbishop of Canterbury for his unique contribution to the application and development of ecclesiastical law. He has given his perspective on the ecclesiastical law.

Emeritus Professor Brice Dickson is the Author of the *Irish Supreme Court Historical and Comparative Perspectives* published by the Oxford University Press, has given an overview of his research on the Supreme Court of Ireland and the development of Irish jurisprudence from the time the Ireland gained independence. It is a research that covers a whole gamut of the history of the Irish Supreme Court.

We trust the May 2022 issue has given you a fresh perspective on issues concerning the Anglo-American legal tradition. We would welcome any suggestions from the academics and legal practitioners on improving its outlook.

Srinath Fernando,
LLM (UK), LLM (Colombo)
Editor-In-Chief / Publisher



ABDEL FATTAH SAEED HUSSEIN KHALIL EL-SISI, PRESIDENT OF EGYPT

ANTÓNIO GUTERRES, UN SECRETARY-GENERAL

Should UNCTAD make an initiative to draft an international convention to regulate the Suez Canal operation in collaboration with the Government of Egypt?

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Editor-In-Chief/ Publisher

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Advocate Yoav Harris on Shipping and Maritime Law

Adv. John Harris established the legal firm of Harris & Co. in 1977. The firm is dedicated to the practice of Maritime and Admiralty Law including ship-arrests, charter party disputes, cargo claims, sale and purchase of ships and the financing of ship purchases, arbitration and commercial litigation. The firm receives "top tier" ratings from *Chambers & Partners*, *The Legal 500*, *Dun & Bradstreet* and *BdiCoface*. The firm receives instructions from the foremost shipping and maritime law departments of international law firms and keeps abreast of English and other jurisdictions' maritime law judgments and publications. In the non-litigation aspect of the practice the firm provides legal advice relating to the various contracts of carriage and attends to matters relating to the sale and purchase of ships and the financing of ship purchases. The firm is the editor of the Israeli chapter for "Shipping" both at the shiparrested.com guide of "Ship arrest at Practice" and of *Chambers and Partners*, and of *Legal 500*, *ICLG*, *The Shipping Law Review*, *Mondaq*, guides. Also, Adv Yoav Harris and Adv. John Harris are the editors of *Chambers International Global Practice* guides for the years 2021, 2022. According to the latest *Chambers* ranking the firm "*has significant litigious capabilities*", has "*an internationally respected offering*" and "*also notably active in ship arrests*".

Adv. Yoav Harris contributes articles to the Israeli monthly magazine "The Cargo"; Additional articles of Adv. Harris relating to International and Maritime Law were published, by way of introductory – in *The Marker* magazine "British settlement-can it be?"; issue 15 of *Shiparrested.com* "The Naval Prize Court"; issue 23 "Against the Ship" or "Rooted in Personal liability" *The Maritime Lien Vs. The Owners*"; issue 33 – "The Hamas/Israel Conflict, is it an "Act of War"? ; issue 34-"On Barratry and Exceptions of Owners Liability"; special edition-"The Grounding of MV Ever Given in the Suez Canal-Beginning of the Legal

Voyage". Yoav's articles regarding the Haifa Maritime Court's authority to act as a Prize Court, were cited both by the Maritime Court (claim in rem 26861-08-13) and the Supreme Court (Civil Appeal 7307/14) when deciding on the matter of M/V Estelle.

The AAL Magazine: Advocate Yoav Harris, thank you for having consented to an interview with our Magazine as we believe that you could throw some light on the strategic importance of the Suez Canal and legal pitfalls the shipping lines might fall into as had been the case with MV *Ever Given*. You have had years of exposure, experience and education having been the Managing Partner of a leading legal firm in Israel. You have inherited this legacy from your father Advocate John Harris who has been in legal practice since 1977 and built up the legal firm Harris and Company. Could you please explain to us the legal authority of the operation of Suez Canal and the manner in which shipping lines could be prosecuted while passing through the Suez Canal?

Adv. Harris: Thank you for your warm welcome, it is my pleasure being with you. I think we are dealing with quite a tricky situation. In fact, ship owners and operators have no commercial alternative but to navigate through the Suez Canal, bearing in mind that the alternative of navigating around African shores and the Cape of Good Hope is not only more expensive in terms of fuel and operation costs and time required, but also exposes the vessel to more perils of the sea and adding more costs to the marine adventure. We can see that on one hand on its welcome announcement of completing the widening the canal project the Suez Canal Authority ("SCA") published it is able of accommodating 100% of the worlds' fully loaded container ships fleet, but on the other hand when such a loaded container ship grounded in the Canal while being under SCA's compulsory pilotage, SCA

detained the vessel and claimed not less than U.S \$ 900 million, such amount was comprised from alleged loss of revenue of US\$ 12-15 million for every day of the grounding and US\$ 300 million for "salvage bonus" and US\$ 300 million for "loss of reputation" (although as mentioned above, shipowners and operators have no alternative but to navigate through the Canal). This detention and claim of the SCA was fully supported by the Egyptian court of Ismailia. Which means that in fact, when crossing the Suez Canal the shipping lines should 'expect the unexpected as they can be prosecuted by the SCA for any alleged violation of the SCA's rules, or alleged damage caused to the either any of the Canal's harbors, docks or navigations ways, and/or alleged commercial damages such as losses of income and loss of reputation as been illustrated in the matter of MV Ever Given.

The AAL Magazine: As you are aware the recent incident involving MV *Ever Given* blocked the Suez Canal for around a week or so which resulted in delays in shipment of goods and potential damage to goods or the ship itself. Some reports indicated that ship had also damaged the canal and dredging had to be done. This incident also delayed hundreds of other ships that could not navigate through and some ships had to be re-routed around the Horn of Africa. Who should be held accountable? Has there been negligence on the part of the Suez Canal Authority or was it on the part of the Captain of the vessel or both parties.

Adv. Harris: According to the insights we received from Captain Herzel Dadu when we investigated this matter, who is a former master of "Zim integrated Shipping Services", and who navigated through the Suez Canal on more than 100 voyages, the recommended speed of navigating in the Canal is 7.5 knots. If the vessel will move

slower, it will lose its steering capabilities. Rows of 8 containers, piled all along 400 meters length of the vessel- as the MV *Ever Given* was loaded, might operate as a huge sail when hit by wind and could effect the position of the vessel and in addition, wind storms may also influence visibility. Therefore, under conditions of forecasted storms it is preferable to have the bow thruster in a "stand-by" position so it could be immediately operated and stabilize the vessel when hit by wind. In addition, the master should be on-guard and alert to maintain the vessels' speed of 7.5 knots and to increase speed when required and if the vessel is slowed by the winds, in order to maintain its maneuvering capabilities. To the best of our knowledge, up to date no formal report that details on the sequence of events and the circumstances and reasons which led to the grounding has been published, although "grounding" is a "marine casualty" according to IMO's Code of the International Standards and Recommended Practices for a Safety Investigations into a Marine Casualty or Marine Incident and as such it should have been investigated and the reasons for this marine casualty ("what happened and "why did it happen" and "what can we learn" in order to avoid further such marine accidents and casualties, should have been published in IMO's reports, under which matters of groundings are classified as "Very serious casualty". It is also worth mentioning in this regard, that the SCA's officials had full access to the vessel Voyage Date Recorder of the vessel and as mentioned previously they have detained the vessel and boarded two of the SCA's pilots on the vessel under a compulsory pilotage according to Article 6 (1) of the SCA's Rules of Navigation. Therefore, we can't tell precisely who's fault was it that caused the grounding. But considering the fact that the SCA's allowed the entry of the vessel to the Canal being perfectly aware of

its size and its container loaded situation and of the forecasted wind and send storms and that the vessel was under compulsory pilotage it might have been that the SCA "played" a significant role in the events or omissions or failures which led to the grounding. However, from the pure legal point of view, the legal concept is that even compulsory pilotage does not exonerate the master and the crew from the proper observance of the duty and it is the duty of the master to observe the conduct of the pilot and in case of palpable incompetency to interpose his authority for the preservation of the property of his employers.

The AAL Magazine: What advice would you give to shipping lines on mitigating risks while passing through Suez?

Adv. Harris: It seems, that in fact, there is nothing that much can be done. As mentioned above the alternative of by passing the Canal will be more expensive and will expose the marine adventure to more perils. It seems that the shipping lines should double check that at the beginning of the voyage the vessel is seaworthy and properly manned and equipped as required by the Hague-Visby Rules, Article III, and in such a case they could try to rely on any of the relevant exemptions from liability which might be either "Act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or the management of the ship", the "Arrest or restraint of princes, rulers or people, or seizure under legal process" or "Any other cause arising without the actual fault or privity of the carrier" as provided under Article III 2 (a), (g) and (q) of the Hague-Visby Rules.

In addition, shipping lines should make sure they have got their proper insurance coverage including insurance against piracy, as it might be that the above

mentioned acts of detention of the vessel followed by a claim for amounts that can be considered as excessive amounts, can be considered as acts of piracy and the payments paid for the release of the MV Ever Given in consideration of the SCA's claim can be considered as ransom payments. In addition shipping lines should be well prepared to declare General Average as we understand was done by the Owners and operators of the MV Ever given and should be familiar with the possibility to limit liability by opening a limitation found following the International Convention Relating to the Limitation of the Liability of Owners of Sea-going Ships, Brussels, 10 October 1957 and its Amending Protocol of 21 December 1979. They should also make sure that the relevant commercial documents such as the Bills of Lading and the Charter party would include a law and jurisdiction clause referring to English Law and courts/arbitration which is a favorable jurisdiction to both enforce laws and rules which exempt or limit shipowners liability and also to issue the relevant orders against proceedings which might be commenced against owners or shipping lines in other jurisdictions (which are less favourable to owners).

The AAL Magazine: I feel that the Suez Canal operations must be closely monitored and supervised by an international organization as it has a direct impact on the global trade. Would you advocate an international committee on the efficacy of operating the Suez Canal? Or should there be an international recognized and monitored specialized certificate for Suez operations that would provide an added feature to the importance of operating Suez. How would you respond to this?

Adv. Harris: I do agree with you. As matter of fact, under Article I of the Convention of Constantinople dated October 1888 "The Suez Maritime Canal shall always be free and of commerce or of war, without distinction of flag. Consequently, the High contracting parties to the convention agree not in any way to interfere with the free use of the Canal, in time of war as in time of peace." However, the Khedivate of Egypt, through whose territory the Canal ran and to whom all shares of the Suez Canal Company were due to revert when the company's 99 years to manage the Canal would have expired was not invited to participate in the negotiations and did not sign the Convention of Constantinople. In the year 1956 following the hostilities which took place between France the United Kingdom, the State of Israel and Egypt, after Egypt under the presidency of Gamal Abdel Nasser nationalized the Canal, and after Egypt blocked the Canal, under U.S pressure, France, the U.K and Israel have withdrawn and after the UN declared the Canal is a property of Egypt.

It is also worth mentioning that in clause 5 of the peace treaty between Israel and Egypt it was stated that the Israeli vessels and cargos destined to Israel or arriving from Israel will enjoy the right of free passage in the Suez Canal, on the basis of the Convention of Constantinople dated October 1888 "which applies to all nations". This declaration, together with right of innocent passage provided by Article 17 of the UN Convention on the Law of the Sea, which according to "[...] ships of all States enjoy the right of innocent passage through the territorial sea, might give rise to an arguments that according to international law the right for free and innocent passage in the Canal should be available to all vessels even though the Canal belongs to Egypt and is part of its territorial sea and therefore, if this freedom of navigation is

interrupted by a groundless detention of a vessel and an excessive claim against its owners, the conduct of the SCA should be monitored internationally. For example, by an establishment of a Panel by the UN which will investigate the matter of the Ever Given and the SCA's conduct and will provide a report which will include both its findings and its recommendations. Such a Panel of Inquiry was established by the UN's Secretary-General, for the inquiry on the 31 May 2010 Flotilla Incident – the flotilla of six vessels which departed from Turkey and were taken over by the Israeli defense forces due to their declared attempt to break the Naval blockade declared and notified by the Israeli forces of the Gaza shore- which was found in the Panel's report as legal. At the end of the day, it eventuated that the Panels' recommendations on the manner in which Israel and Turkey will bring the matter to end and resume their relationship was in fact accepted by both parties.

Coming back to the Suez Canal it seems that although there might be some UN-IMO tools of better investigating the incident of the MV Ever Given and the manner in which the Suez Canal Authority operates in general, from realistic geo-politic points of view, I can hardly see how Egypt will allow such investigation to take place which would be considered as an interference with its own national property. One should also bear in mind that at the end of the day, it seems that the economic power is within the hands of Egypt, because as mentioned before, commercially-globally speaking, shipping lines have no alternative but to use the Suez Canal.

The AAL Magazine: Should there be a new regime on marine insurance especially for Suez operations.

Adv. Harris: I think that the well-known insurance concept of "piracy" should be interpreted as also including an incident where a vessel is detained by the SCA and Egyptian Courts for securing excessive amounts of claims which are claimed with so little foundation which would imply that the payments paid in order to release such a vessel from its detention are to be considered as ransom payments. In this regards it might be worth while to adopt the *The Evangelismos* tests for a wrongful arrest of a ship, according to, when an action was so unwarrantably brought, or brought with so little colour, or so little foundation, that it rather implies malice on the part of the Plaintiff or that gross negligence, which is equivalent, than the Plaintiff will be obliged to pay the shipowners compensation for the ship owners' damage resulting from the detention of the vessel due to its' arrest by a maritime court which eventually it was a wrongful arrest.

The AAL Magazine: Do you think Marine salvage and commercial operators could come to the aid of vessels in distress within the area of sea under Egyptian sovereignty as such international conventions might not be sufficient to deal with this scenario. How adequate are laws governing marine salvage in terms of operating under Suez Canal theater of operations.

Adv. Harris: The International Convention on Salvage 1989, clearly state that "This convention will not affect any provisions of national law of any international convention relating to salvage operations by or under the control of public authorities" (Article 5. 1) and also that "Nothing in this Convention shall effect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coast line or related interest

from pollution or the threat of pollution following upon a marine casualty or acts relating to such a casualty [...], including the right of a coastal State to give directions in relation to salvage operations". Therefore, obviously the SCA and the Egyptian authorities are fully sovereign to conduct, manage and handle salvage operations relating for example to a grounding of a vessel (which is a marine casualty) in the Canal or at any territorial waters of Egypt (and even out-side the territorial waters if the marine casualty might effect the Egyptian coastline). The "problem" is that when exercising its rights to get paid for the costs of the salvage which is a recognized maritime lien, the SCA might have been excessive in claiming US\$ 300 million for a salvage bonus.

The AAL Magazine: As you are aware the legal proceedings were initiated in Egypt and Japanese owners commenced litigation of liability in the High Court in London and the Korean charter operator Evergreen has been named as parties by the owners. I can see a complete disarray of the legal proceedings as the facts are very sketchy on as to who was responsible for what. This involves damage to the vessel, damage to the cargo it was carrying, cost of refloating and salvage operation, financial loss incurred by the Suez Canal Authority, any damage to the Suez Canal itself, and whether it had any bearing on the other vessels which were also delayed and extra cost for taking Cape route. How would you appraise this situation in terms of the applicable maritime law?

Adv. Harris: According to the media coverage of the matter, the SCA detained the vessel after it was re-floated (on 29th March 2021) and initiated a arrest procedures before the court of Ismailia City, claiming the above-mentioned compensation of US\$ 900 million.

According to the courts order -ordering the arrest of the vessel, the Ever Given was to be held until the compensation amount is paid, according to the Egyptian Maritime Law. An appeal which as filed by the Owners' club - UK P&I CLUB was denied. At a later stage a settlement was reached between the vessel-interests and the SCA the details of which are confidential, and the vessel was released.

We ourselves are not aware of the particulars of the claims and proceedings which were further filed by any of the parties involved. However, under the presumption that the relevant commercial - legal documents which can be for example the bills of lading and the charterparty contain a law and jurisdiction clauses referring any dispute to English Law and courts or arbitration, it seems that the relevant and competent Courts and arbitration institutes would be "full" with claims which might be related to many aspects of maritime law: Seaworthiness and pilotage, limitations and exempts of liabilities, marine insurance, salvage and general average, charter party disputes, etc. In a nutshell, it seems that insofar as owners will prove that they have provided a sea worthy vessel properly manned and equipped at the beginning of the voyage then they could argue for exemptions and limitation of liabilities and to recover salvage payments (under the assumption that the confidential settlement agreement with SCA provides a break down of the amounts paid for Salvage and other heads of claims) from the cargo interests. In addition, if and in as much that the SCA's detention of the vessel for excessive claimed amounts would be found to be as acts similar to piracy and the settlement payment as of the nature of ransom, it might be that additional amounts paid to the SCA under the confidential settlement agreement would also considered as

"salvage payments" in addition to the payments which are so defined, in the settlement agreement itself. However, in order to conclude that the settlement payments are more of the nature of ransom, the reasons and the liabilities for the grounding have to be examined as would the amounts of damages, if any, caused to the SCA as a result of the grounding.

In relation to the SCA demands which were published, it seems that "damages for reputation" are remote from recovery both because shipping lines have no commercial choice but to use the Canal and they would continue and have continued to use it regardless of the grounding incident, and also because such an alleged damage is not a direct damage or expense, and usually indirect damages or losses are not covered according to the principles of maritime law.

The AAL Magazine: Could there be a criminal responsibility on the part of the Suez Canal Authority or on the Captain of the vessel, if so under what international convention this could be covered. What would have happened had there been a passenger ship.

Adv. Harris: According to the English Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, when vessels do not comply with Rules I to 36 and Annexes I to III of the International Regulations for Preventing Collisions at Sea 1972 and its amendments, the owners of the vessel, the master and any person responsible for the conduct of the vessel shall each be guilty of the offence, punishable by imprisonment for a terms not exceeding two years and a fine (clause 6 of the regulations). Although the International Regulations relate to collisions and not to grounding, still, according to Rule 9 of the International

Regulations (headed "Narrow channels"), "a vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limits of the channel or fairway which lies on her starboard side as is safe and practicable, and also where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal. However, it is difficult to see how the above-mentioned International Regulations were indeed violated by the vessel prior to its grounding, and we are not aware of any criminal or similar proceedings being taken against the owners or the master of the *Ever Given*, and also not by the SCA.

The above-mentioned International Regulations apply to "all vessels" so in terms of (probable lack of) criminal liability, the results would be the same.

The AAL Magazine: Can you throw some light on how the general average contribution might work in this regard. Would the owners press on the cargo owners to contribute to the losses caused by the incident which entails a proportion from the owners as well?

Adv. Harris: The marine adventure is an adventure concerning three interests: the interest in the ship, those in the cargo and those in the freight remaining to be paid. Usually, the common principle is that any loss sustained by one of these interests must generally be borne by that interest itself, it lies where it has fallen- it is a particular average. But, when in order to avert a danger which threatens the whole marine adventure some interest is sacrificed (like throwing overboard of cargo, or cutting away masts for safety in a storm), the loss is imposed upon all for whose sacrifice has been made, in proportion to

their saved value. It is a general average, derived from the ancient law of Rhodes and adopted in the Digest of Justinian. Therefore, when effectual assistance is given to the ship and cargo in time of danger, by "strangers" to the ship, they become entitled to salvage payments or rewards (which are recognized maritime liens, allowing the salvagers to arrest the vessel and sell it under a judicial sale by a maritime court and to receive their payments from the selling of the vessel) and the salvage itself (which can be for example the towage of the vessel out of the position of danger) is considered as a general average loss or expenditure. Also, a payment for captors of the vessel to induce them to give up the ship and cargo is considered as a general average loss. Usually, the ship owners put in writing in the terms and conditions of the Bill of lading or the charter party their right to impose a possessory lien on the cargo (which is, after loading on the vessel, under their hands) to secure any amount due to them in relation to the carriage of the cargo in their vessel.

Therefore, the mechanism of the General Average should be relatively simple. Provided that the owners or carriers preserved their rights for a possessory liens on the cargoes carried, they should be provided by the cargo-interests with General Average bonds signed by a respected P&I Club or cargo insurer which guarantee for the owners the effecting of the salvage payments as would be eventually adjusted by the specialized adjusters under a legal-arbitral procedure, usually taking place in London. The principles of General Average have been codified in the "York-Antwerp Rules", promulgated by the "Comite' Maritime International" which is a non-governmental international organization whose object is to contribute to the unification of maritime

law. Usually, the Bills of lading and the charter parties refer to The York-Antwerp Rules of 1994 and by their incorporation they bind the parties to the marine adventure and govern the general average matters.

The AAL Magazine: If I may take you to a precedent in a Panama Maritime Court where Panama Canal Authority was found guilty of negligence as there had been a human error on the part of the Pilot. How would Panama Canal Authority have dealt with this situation, had this incident taken place at Panama Canal? Of course Panama Canal is a freshwater lock system whereas Suez operates more on ocean tides. Is there a correlation of facts and circumstances?

Adv. Harris: The manner in which the canal operates -either as a freshwater lock system or on ocean tides is of less relevance. The importance is that a Panama Maritime Court was willing to accept the possibility that the Panama Canal Authority was negligent and impose on it tortious or other liability. This is a very interesting point because the Court of Ismailia acted totally different by ordering on the arrest of the *Ever Given* to secure a claim for US\$ 900 million filed by the SCA, comprised also by US\$ 300 million for "loss of reputation", without being provided, probably, with any material evidence relating the SCA's role (by its compulsory pilots) in the grounding and to the claimed amounts. I will be happy to receive a copy of the Panama Maritime Courts judgment, it is very interesting.

The AAL Magazine: As regard the arrest of the *V Ever Given* by Egyptian Court, do you think this is an incident such a drastic action warranted. It further delayed the cargo operations. Do you think a new regime should be in place for future

operations as no one is sure of the way how a similar situation would be dealt with by the Suez Canal Authority and the Laws of Egypt?

Adv. Harris: As discussed, there is a difference between "what should be" and "what there is" in relation to the conducts of the SCA, especially when comparing to the willingness of the Panama Maritime Court to accept that the Panama Canal Authority was responsible for its' pilot's error. Therefore, it seems that the most available and practical solution would be that the parties to the marine adventure-owners, cargo interests and their insurers will recognize that the passing through the Suez Canal might result in a peril and might end with the capture of the vessel, and make the insurance arrangements, accordingly.

The AAL Magazine: Had there been an issue with the seaworthiness or total destruction of the ship for some unforeseen reason, what would have been the procedure for owners, charters, cargo owners, salvage operations and what action should Suez Canal Authority have taken to mitigate the risk.

Adv. Harris: Obviously if there would have been an issue with the seaworthiness of the vessel at the beginning of the voyage, then it would allow owners the possibility of exemption from liability and to claim a general average contribution. But, if unfortunately, the out-come of the grounding would be more dramatic then "only" the 6 days of the vessel being "trapped" in the Suez Canal, and for example would have resulted with damage to the vessel or the cargo or with the need to discharge the containers from the vessel in order to have it re-floated – a possibility that was considered and would have been must more costly considering the size of

the vessel and the equipment required for such an operation, which obviously was not at hand and would mean that the vessel would have remained in its position much longer, until it would have been re-floated, then, obviously the volume of the relevant amounts -salvage costs, SCA's loss of income, damage to the vessel and cargo would be much more higher then the "modest" amount of US\$ 900 million claimed by the SCA and eventually was settled, probably for less. However, the maritime-legal principles we have discussed, would have remained the same,

meaning that if and as much the owners have complied with their duties relating to the beginning of the marine adventure, then matters of limitation of liability, insurance, general average, would apply. At the end of the day these ancient principles follow the marine adventures, up to date, reminding us all that with all modernity and even when dealing with a newly built, modern large container vessel, nevertheless, navigating a canal is a marine adventure subject to sand storms, winds and the human errors of pilots or others.





Charles George QC on Ecclesiastical Law

Charles George graduated with a First Class Honours from Magdalen College, Oxford in 1966. He was called to the Bar, Inner Temple in 1974 (Bencher 2001), took his silk QC in 1992. He was a Recorder of the Crown Court from 1995 to 2017 and Chancellor of the Diocese of Southwark from 1996 to 2009. He became the Dean of the Arches and Auditor of the Chancery Court of York and Master of the Faculties from 2009 to 2020. He was authorised under s.9 of the Senior Courts Act 1980 to sit as a judge of the High Court from 2010 to 2017. He appeared before the House of Lords/Supreme Court in landmark case involving **human rights** (*S.Buckinghamshire DC v Porter (No.1)* and *Aston Cantlow Parochial Church Council v Wallbank*); **the duty to give reasons** (*S.Buckinghamshire DC v Porter (No.2)*); **town and village greens** (*Oxfordshire County Council v Oxford City Council*; *R(Lewis) v Cleveland and Redcar Borough Council* and *Newhaven Port & Properties Ltd v East Sussex County Council*); **ecology in town and country planning** (*R(Morge) v Hampshire CC*). All these cases involved public law issues, and ultimately turned on the proper interpretation of statutory provisions.

In 2021 he was awarded by the Archbishop of Canterbury The Canterbury Cross for Services to the Church of England “For his unique contribution to the application and development of ecclesiastical law”.

The AAL Magazine: Charles George QC, we are honored to have your consent for this interview. You have had a distinguished legal practice having been culminated in becoming the Dean of the Arches of the Church of England. This is a very rare opportunity for a Queen’s Counsel to be a

Judge of an Arches Court of Canterbury. A judge of this caliber must have a deeper understanding of the ecclesiastical law in addition to being thorough with English law. You claimed that you are now retired from the Bar after having spent 40 years of arguing, consulting law books, dispensing justice, and reflecting deeply about the life of individuals tasked with expounding the Christian Theology. How can you stay retired when you have such a vast reservoir of knowledge? Don’t you think in the eyes of God, ‘retirement’ is a prohibited word, if I may say so – perhaps in lighter vein?

Charles George QC: I was privileged to be the senior ecclesiastical judge for eleven years, from 2009-2020, and to be able to postpone retirement till the maximum retirement age of 75. The position was a part-time one which, for most of the time I combined with my work in private practice as a barrister and as a part-time secular judge. Whilst I miss the intrinsic interest and companionship that such work brought, there comes a time when there is a danger of staleness. I enjoy my retirement in Kent, close enough to London but also to some wonderful countryside. I hope that does not sound too pompous or boring.

The AAL Magazine: Could you please explain to us the structure of the Church of England and the role of the Ecclesiastical Courts. What types of cases were brought before you?

Charles George QC: The Church of England is an “established” church, that is it is part of the constitution of England (but not Wales, Scotland or Northern Ireland) with the Queen at its head as Supreme

Governor (as has been the position since Henry VIII broke with the Papacy). Parliament has delegated to the General Synod of the Church of England the task of formulating and revising ecclesiastical law, through Measures which are subject to Parliamentary approval and the Royal Assent. The ecclesiastical courts originally had very wide powers, over much of contract law, wills, and marriage/divorce. Now the ecclesiastical courts have a much more limited role in determining what apart from worship can be carried out in churches and what changes can be made to the fabric and appearance of churches and their churchyards. This is known as the faculty jurisdiction, and is administered in each diocese by its consistory court. There is a significant power to grant injunctions and make restoration orders, which in one recent case involved an order for the demolition of a recently but unlawfully erected local authority nursery school in a churchyard (*Re Christ Church, Spitalfields (no.2)* [2019] EACC 1; [2019] Fam 343). The ecclesiastical appeal courts (the Arches Court of Canterbury, and the Chancery Court of York) also have jurisdiction over clergy disciplinary appeals from bishops' disciplinary tribunals. There are also many areas where ecclesiastical law is enforced through the secular courts, for example Chancel Repair Liability which attaches to certain land is enforced through the secular courts.

The AAL Magazine: How does the Episcopal Church of US and other Anglican Communion follow their adjudication of canon law issues? Do they derive precedence or *stare-decisis* from cases decided by the

Church of England or do they have their own way of adjudicating disputes?

Charles George QC: The Provinces of the Anglican Communion have their own procedures for determining these matters and do so without regard to decisions of the English ecclesiastical courts. An exception is the disestablished Church of Wales which operates a system very similar to the English faculty jurisdiction and whose courts are much influenced, though not bound, by English ecclesiastical court decisions.

The AAL Magazine: Does a litigant have a right of appeal to the UK Supreme Court?

Charles George QC: No, but the Judicial Committee of the Privy Council (consisting of the members of the UK Supreme Court) can grant permission to appeal from the ecclesiastical appeal courts. In the last 50 years there has only been one such application for permission to appeal, and this was refused as not raising a point of sufficient public importance to warrant a further appeal.

The AAL Magazine: We have studied English Law, but Ecclesiastical law is never taught at LLB level. We would like to know how Ecclesiastical Law is grounded and whether it can be linked with English common law. Under what circumstances do you derive English law principles?

Charles George QC: Ecclesiastical law is grounded in Statutes made by Parliament and Measures emanating from the General Synod of the Church of England, but approved by Parliament. There is also a considerable body of case-law. Decisions of

the ecclesiastical appeal courts are binding on consistory courts, the first-instance ecclesiastical courts. Ecclesiastical courts are much influenced by, but not bound by, English common law and its principles. Ecclesiastical Law used to be taught at the University of Cambridge, but now the only course is a very popular postgraduate one in Canon Law run by the University of Cardiff (and leading to an LLM). (Although strictly Canon Law relates solely to the content of Canons of the Church of England only binding on the clergy and a very few others, the term Canon Law is usually used interchangeably with Ecclesiastical Law).

The AAL Magazine: How does Ecclesiastical law square with UK Human Rights Act of 1998? The realm of the Ecclesiastical law covers, church property, charitable trust, discipline of clergy and religious liberty, Have there been any instances where you had to refer to the European Union jurisprudence. What was the situation prior to UK joining the EU in 1972?

Charles George QC: I am unaware of any areas where European Union jurisprudence has affected decisions of ecclesiastical courts, so that Brexit has not made any difference. Ecclesiastical courts are bound by the UK Human Rights Act 1998, and human rights issues quite frequently arise in the ecclesiastical courts, for example most recently in the Court of Arches decision in *St Giles, Exhall* [2021] EACC 1 where such issues arose in connection with the lawfulness of an inscription in Gaelic on a grave in a Church of England cemetery. One of the leading decisions of the secular courts on the interpretation and scope of the

Human Rights Act 1998 is an ecclesiastical law case, *Aston Cantlow Parish Church Council v. Wallbank* [2003] UKHL 37 on Chancel Repair Liability.

The AAL Magazine: If I may venture into more theological aspects such as right to abortion. What is the policy of the Church of England on this controversial issue? There has been a case Ref. *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)* decided by the UK Supreme Court in which the Court took into consideration that “the community undoubtedly does have a moral interest in protecting the life, health and welfare of the unborn - it is that interest which underlies many areas of the law, including the regulation of assisted reproduction, and of the practice of midwifery, as well as of the termination of pregnancy. But the community also has an interest in protecting the life, health and welfare of the pregnant woman - that interest also underlies the regulation of assisted reproduction, of midwifery and of the termination of pregnancy. And pregnant women are undoubtedly rights-holders under the both the Convention and domestic law with autonomy as well as health and welfare rights. The question, therefore, is how the balance is to be struck between the two” How would you respond to this scenario from a theological perspective? What is the policy of the Church of England on abortion necessitated by the medical condition and on unwanted pregnancy arising from rape etc ?

Charles George QC: The Church of England’s stated position, as reaffirmed in

2019, combines principled opposition to abortion with a recognition that there can be strictly limited conditions under which abortion may be morally preferable to any available alternative. This is based on the view that the foetus is a human life with the potential to develop relationships, think, pray, choose and love. This is not, however, a matter within the jurisdiction of the Church of England ecclesiastical courts.

The AAL Magazine: As you know more people now prefer to engage in Alternative Dispute Resolution -ADR than pursuing a Court case, as it would be too costly, time consuming and the unpredictability of the outcome. How is the Church of England pursuing ADR methods? Is there a mechanism within the Church?

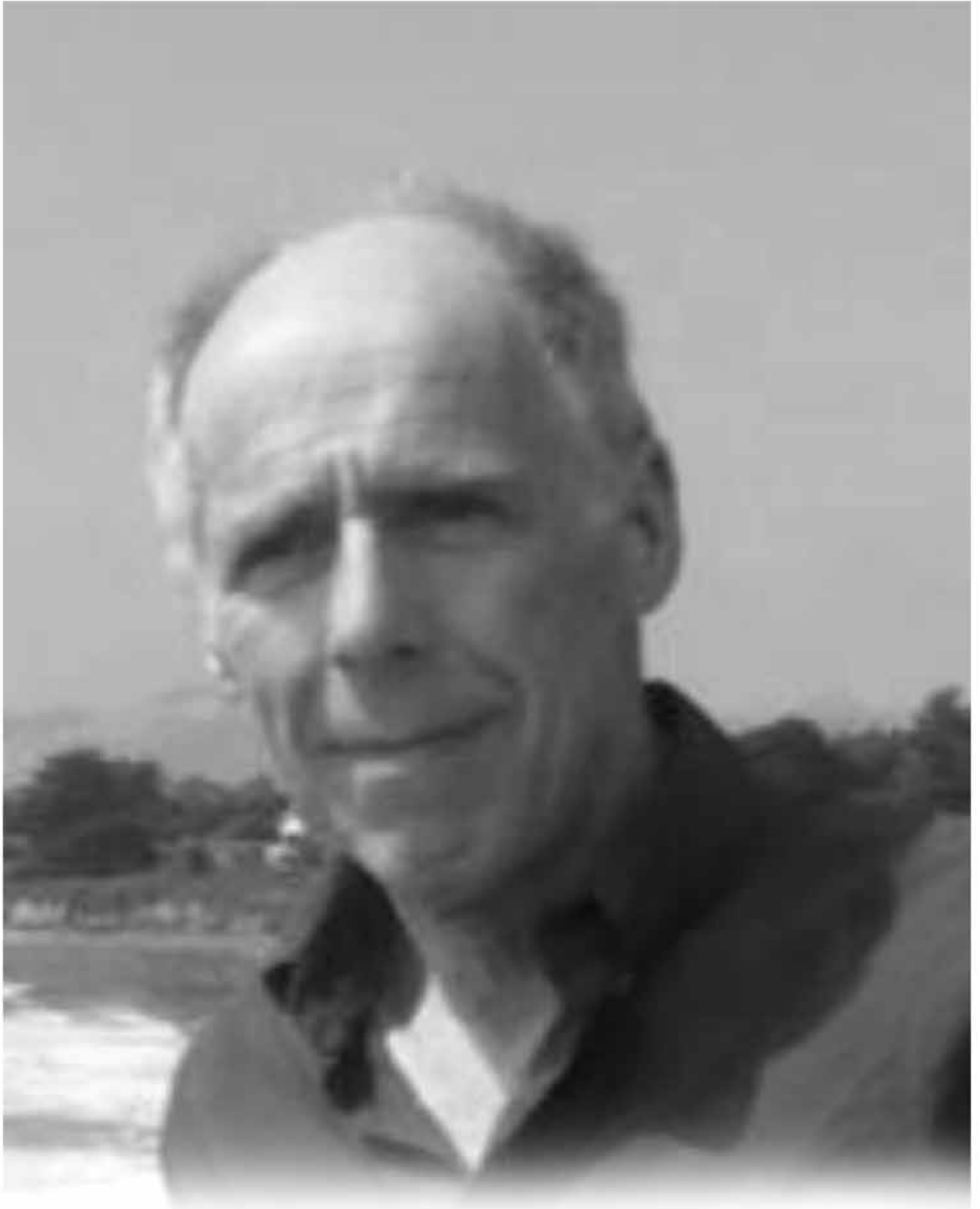
Charles George QC: There have been rare clergy disciplinary cases which have been resolved through ADR. So far as I am aware ADR has never been used in connection with a contested faculty case, nor would ADR be capable of delivering the necessary faculty (or permission) which is the subject-matter of almost all cases in the ecclesiastical courts.

The AAL Magazine: There is a clamor by some special interest groups to legalize

cannabis. How does this square with the ecclesiastical policy of the Church. If legislation is introduced, by what method can the Church thwart such blatant immorality? Legalizing cannabis goes to the very root of existential evils in our society. By what way can the Church intervene legally or by a moral edict?

Charles George QC: Whilst the Church of England is supportive of the medicinal use of marijuana in certain cases, it has no policy in relation to easing or altering other restrictions on the use of drugs. This again is a matter outside the scope of the ecclesiastical courts, although the taking of illegal drugs by members of the clergy is a feature which occurs from time to time in disciplinary cases coming before Bishops' Disciplinary Tribunals. If Parliament were to legalise the taking of certain drugs, the Church of England would be bound by such legislation, though it could still treat the taking of drugs as conduct unbefitting a member of the clergy, as it does at present where clergy are warned to "avoid the influence of alcohol or drugs" and a distinction is drawn between conduct which is legal and what is "morally acceptable" (see *Guidelines for the Professional Conduct of the Clergy*, 2015, paras 10.1 and 10.9).

Photo credits; Ecclesiastical Law Society <https://ecclawsoc.org.uk/events/charles-george-qc-on-do-we-still-need-the-faculty-system/>



Emeritus Prof. Brice Dickson on the Supreme
Court of Ireland

Brice Dickson is Emeritus Professor of International and Comparative Law at Queen's University Belfast, Northern Ireland. Having completed law degrees at the University of Oxford 1970s he was called to the Bar of Northern Ireland in 1976 and studied at the University of Paris II. He has taught at the Universities of Leicester and Ulster as well as at Queen's and has been a visiting professor at Fordham Law School, the University of New South Wales and the University of Melbourne.

A long-standing advocate for human rights, in 1981 Dickson helped to found a leading NGO in Northern Ireland (the Committee on the Administration of Justice) and at Queen's he co-established one of the UK's first Masters in Human Rights Law in 1989. From 1999 to 2005 he served as the first Chief Commissioner of the Northern Ireland Human Rights Commission, a statutory body created in the wake of the Belfast (Good Friday) Agreement of 1998. He also served as an independent member of the Policing Board of Northern Ireland from 2012 to 2020.

Besides *The Irish Supreme Court: Historical and Comparative Perspectives* (2019), Dickson's recent books include *The Judicial Mind: A Festschrift for Lord Kerr of Tonaghmore* (co-ed, 2021); *Writing the United Kingdom's Constitution* (2019); *Electoral Rights in Europe: Advances and Challenges* (co-ed, 2017); *Human Rights in Northern Ireland: The CAJ Handbook* (co-ed, 2014); *Human Rights and the United Kingdom Supreme Court* (2013); and *The European Convention on Human Rights and the Conflict in Northern Ireland* (2010). His *International Human Rights Monitoring Mechanisms: A Study of*

their Impact in the UK will be published at the end of 2022.

The AAL Magazine: Prof. Brice Dickson, it is our pleasure to feature you and your book on the Supreme Court of Ireland. You have delved deep into to the jurisprudence of the Irish Supreme Court since 1924. Obviously you must have analyzed the corpus of jurisprudence built up over a very long period of time. What drove you to undertake this task?

Prof. Dickson: Having spent most of my working life as a legal academic in Northern Ireland, I had often been struck by how infrequently attention was given anywhere in the UK – or in the common law world more generally – to the legal system of the Republic of Ireland. I had written books and articles on the UK's top court, so I decided it would be interesting and useful to redress the balance (and a gap in the literature) by writing a scholarly book on Ireland's top court. The Supreme Court's workload had recently been greatly reduced through the creation of a lower tier Court of Appeal. With its centenary coming up in 2024, the time was right for an assessment of the Supreme Court's past and current effectiveness. I hope the book will bring the Irish Supreme Court's jurisprudence to the attention of a much wider audience of lawyers than has hitherto been the case.

The AAL Magazine: Before we go into the contours of constitutional jurisprudence, could you please elaborate on the influence of British legal principles in Ireland and whether Ireland – after

independence in 1922 – has departed from adopting the English legal principles and tried to build up its own jurisprudence.

Prof. Dickson: Speaking very generally, Ireland has largely followed the contours of legal developments in the UK since 1922, whether legislative or judge-made, but it has also chosen its own path in several areas. Even when it has emulated British statutes or jurisprudence it has usually done so not by slavishly following a British model but by producing its own custom-made laws based on distinctive reasoning. There are two good examples of this in the fields of negligence law and administrative law. Thus, the leading British case of *Donoghue v Stevenson* (1932), which firmly established the concept of a duty of care owed to one's neighbor, was not immediately applied in Ireland, but within 25 years Ireland's own case law was marching in parallel with it. And while the British decision in *Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) laid out the 'reasonableness' principle by which challenges to the legality of public authority decisions should be measured, Ireland has adopted a fairly similar approach without itself expressly following the British case. An area of law in which, until recently, Ireland lagged behind that of the UK is personal and family law. Divorce was not possible until 1995, transgenderism was officially accepted only in 2015 and abortion was not decriminalized until 2019. There is still no legislation on surrogacy nor, as in the UK, on assisted dying.

The AAL Magazine: I have come across some of the Irish Supreme Court cases where greater reliance had been placed upon American jurisprudence. Do you think this was due to adoption of the Irish Constitution as the supreme law of the land, as is the case with the US Constitution? Britain's doctrine of parliamentary sovereignty seems somewhat outdated when it comes to constitutional governance. What reasons can you adduce for this departure in Ireland?

Prof. Dickson: When Ireland achieved its independence from the UK in 1922 it understandably wanted to cast off the laws dating from the colonial era and to develop its own legal system. The Constitution of the Irish Free State in 1922 envisaged that Ireland's future relationship with its former colonial power would be similar to that of Canada's, but the predominant view amongst the top judges remained that the status of the 1922 Constitution was not very different from that of an ordinary Act of the Irish Parliament (the Oireachtas). As time went on the influence of the US legal system began to grow. In the 1960s a close friendship between Judge Brian Walsh of the Irish Supreme Court and Justice William Brennan of the US Supreme Court undoubtedly influenced the former's approach to the solution of various legal disputes. In *The State (Quinn) v Ryan* Walsh stated that if the approach of any foreign court of final appeal was to be held up as an example for the Irish Supreme Court to follow it should be the

US Supreme Court rather than the House of Lords in the UK.

There was a spate of judicial creativity in the Irish Supreme Court during the 1960s and 1970s which has not been mirrored since, the prime innovators being the trio of Justices Ó Dalaigh, Walsh and Henchy. Certainly Ireland's 1937 Constitution has been regarded as a hugely important document but, with the important exception of some 'unenumerated' rights which the Irish Supreme Court has 'discovered' within the text, it has not been subjected to the degree of judicial development which the US Constitution has attracted over the years. On the other hand, the Irish Constitution is, I am glad to say, much easier to amend than America's: in its 85-year history to date it has already been amended 32 times. And there are very few lawyers or judges who adopt an 'originalist' approach to interpretation of the Constitution.

The AAL Magazine: Professor, you have researched the period from 1922 to 1937 when Ireland had the status of a British dominion, and you have then looked at how the Supreme Court's jurisprudence shifted after the 1937 Constitution was adopted. Then the Irish Supreme Court enjoyed another fresh start when it was 'restructured' in 1961. Why did you divide your analysis of the Supreme Court's history into those three phases and how did the Court differ in each phase?

Prof. Dickson: Clearly the Supreme Court was still finding its feet during the 15 years of the first Constitution in 1922.

That document reflected the dominion status of the country and contained no set of fundamental rights. It also allowed amendments to be made to the Constitution by ordinary Acts of the Oireachtas. The 1937 Constitution marked a whole new beginning for the nation. Even though it was significantly influenced by Éamon de Valera's wish that the country should adhere to strict Catholicism, it also promoted basic civil liberties and embedded a stricter separation of powers between the Oireachtas, the government and the judiciary. The reforms it contained concerning the Supreme Court were not in fact implemented until the early 1960s, which is partly why it was the Justices of that decade and the next who began to modernize the Irish nation. After 1937 the Supreme Court did not consider itself bound by decisions it had made under the 1922 Constitution, even when the wording of the two Constitutions was similar. But the Court's overall approach remained a relatively conservative one, even after 1961, as illustrated most notably in its rejection in 1983 of a claim by a gay man, David Norris, that his right to a personal life was breached by the criminalization of homosexuality. Women, too, were badly served by the Court in its case law on abortion, especially in the *X* case in 1992. However, the judges were not unrepresentative of the nation as a whole, which in general remained reserved, religious and restrained.

The AAL Magazine: What were the changes and judicial attitudes that you

found in your research after Ireland joined the European Union in 1973. How did it influence the Irish Supreme Court?

Prof. Dickson: Membership of the European Economic Community, and of its successor the European Union, was a crucial turning point in the modernizing of Ireland, certainly economically but also politically and socially. Constitutionally it meant that the Constitution of Ireland was expressly subordinated to laws made in Brussels and Luxembourg, a position which some other European countries, including Germany, had found difficult to accept. The Supreme Court, in the *Crotty* case (1987), played a prominent role in limiting the supremacy of European law by ruling that any future attempts to extend Ireland's commitment to European integration would need to be endorsed by a referendum approving a change to the country's Constitution. A quarter of a century later, in the *Pringle* case (2012) the Supreme Court rowed back a little on the *Crotty* principle when ruling that Ireland's joining of the European Stability Mechanism was not a matter that required approval in a referendum. To date there have been no fewer than nine referenda in Ireland on European issues. Future Supreme Court judges such as Donal Barrington, John Murray and Fidelma Macken gained valuable experience of European law while serving as judges in the Court of Justice in Luxembourg. Others, such as Nial Fennelly and Gerard Hogan served as Advocates General there. Brian Walsh was a part-time judge at the European Court of Human Rights while

simultaneously serving as a Supreme Court Justice in Ireland.

The AAL Magazine: Can I assume that EU jurisprudence crept into Ireland long before UK adopted the Human Rights Act in 1998? Have you noticed a remarkable shift in Irish jurisprudence between 1973 and 1998?

Prof. Dickson: No, it would be a mistake to assume that Ireland leapt ahead of the UK as regards the implementation of EEC / EU law. Both nations faithfully implemented the Regulations and Directives issued by the European institutions, referred issues for preliminary rulings from the European Court of Justice, applied the *acquis* (i.e. the settled case law) of that Court, and defended themselves against infringement proceedings brought by the European Commission (while accepting any adverse outcome in those proceedings). The implementation of European law was made more controversial in Ireland than in the UK because Ireland had a written Constitution which prescribed certain procedures that did not exist in the UK. The top courts of both nations upheld the rules relating to free movement of goods, services, capital and people. On numerous occasions they applied the strict standards of European discrimination law in the employment and service provision contexts. But because EEC / EU law has little to say about social and cultural issues such as divorce, homosexuality, abortion, adoption, surrogacy and assisted dying, it has had little or no

influence on the development of Irish law in those domains. On all of those issues the UK's law has been more liberal than Ireland's.

The AAL Magazine: Has Ireland's jurisprudence on human rights developed along different lines from those in the jurisprudence of the UK?

Prof. Dickson: The UK allowed domestic courts to hear claims based on the European Convention on Human Rights (which of course does not derive from the EU but from the Council of Europe) when it enacted the Human Rights Act in 1998. Ireland followed suit more than five years later when it enacted the European Convention on Human Rights Act 2003. (The UK and Ireland were the last two of the Council of Europe's 47 states to domesticate the Convention.) The impact of the ECHR has been much more significant in the UK than in Ireland because in Ireland the ECHR, unlike EU law, is subordinate to the country's Constitution. So a claimant may argue that his or her rights under the ECHR have been breached by some piece of Irish legislation, but if the laws in question are not in breach of the Irish Constitution then no immediate remedy can be provided to the claimant. In other words, the Irish Supreme Court still bases its conception of human rights first and foremost on Articles of the Constitution. Only if a claimant who obtains no remedy domestically then takes the Irish government to the European Court of Human Rights in Strasbourg – and wins – will the Irish state have to provide a

remedy. That is how homosexuality was eventually decriminalized in Ireland and it is how the law on vicarious liability for child sex molestation has needed to be changed too, following the European Court of Human Rights' ruling in *O'Keeffe v Ireland* in 2014.

Human rights are also protected by EU law, most notably through its 'general principles of law' (which protect the right of access to justice, for example) and through its various Directives on discrimination. UK courts will still have to apply those principles when they are interpreting 'retained EU law' (laws derived from the EEC / EU which have not been repealed in Britain, such as the Data Protection Act 2018), but Ireland's courts will not only have to apply those principles more generally but also the EU's Charter of Fundamental Rights. On some matters that Charter goes further than the ECHR, even though it applies only whenever Ireland is implementing EU law. For instance, it guarantees the right to access vocational and continuing training, to engage in work and pursue a freely chosen occupation and to not be discriminated against on the basis of genetic features.

The AAL Magazine: In your book you have stated that Irish Supreme Court has manifested a healthy degree of judicial activism and in some cases not as clearly or as imaginatively as might have been expected. What traditions was the Supreme Court trying to conserve?

Prof. Dickson: Again speaking generally, I think it is fair to say that the average

Supreme Court Justice has been of a conservative disposition. They have tended to limit their role to that of deciding legal disputes rather than expanding it into that of making new laws for the future. The Constitution, after all, vests 'the sole and exclusive power of making laws' in the Oireachtas (Article 15.2.1). But, in a common law system, judicial decisions do set precedents which must be followed by lower courts. Since 1965 the Irish Supreme Court has, to its credit, adopted the view that it can refuse to follow one of its own previous decisions if it decides that it was 'clearly wrong' (an approach which was more or less mirrored by the UK's Appellate Committee of the House of Lords a year later), but it still displays a reluctance in trespass on to territory which it deems best left to elected politicians. The much-lamented Judge Adrian Hardiman – often referred to as Ireland's equivalent to Justice Antonin Scalia – was particularly adamant that judges should not set rules in the area of social and economic rights. The last three Chief Justices – Susan Denham, Frank Clarke and Donal O'Donnell – have been slightly more prepared than their predecessors to engage in judicial activism, but the majority of Supreme Court judges are still most reluctant to create new rights. The traditions they are conserving are those of judicial restraint, respect for the Constitution and, as they would see it, deference to the rule of law.

For a while the Supreme Court toyed with the view that some disputes could justifiably be decided in accordance with

'natural law', a concept which for the first Chief Justice of Ireland, Hugh Kennedy, was really a euphemism for traditional Catholic morality. Today, thankfully, the religious dimension to what appears to be 'natural' reasoning has disappeared from Supreme Court judgments. References to the 'special position' of the Catholic Church and to other denominations were removed from the Constitution in 1979, although, rather alarmingly, Article 41.2.2 still requires the state to 'endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home'.

The AAL Magazine: As you are well aware, there have been many decades of sectarian violence in Northern Ireland and in some cases militant activities were planned within the Republic but conducted in Northern Ireland. There have been several terrorism cases decided by the Supreme Court of Ireland. Have you found any departure in Ireland from treating these sensitive cases in terms of applying the law as rigorously as is done in UK?

Prof. Dickson: The Irish courts have rigorously applied Irish law to instances of Irish terrorism. As in Northern Ireland they have removed the right to jury trial from some defendants associated with unlawful paramilitary organizations, but they have created instead a 'Special Criminal Court' consisting of three judges, whereas in Northern Ireland a single judge hears such cases, with an automatic right of appeal to an appeal court comprising three judges. The

Special Criminal Court is also used in some non-terrorist cases, such as trials of defendants charged with serious organized crime. Where there is a question mark over the Irish Supreme Court's approach to terrorism cases is in its case law concerning the extradition of terrorist suspects to Northern Ireland. During most of the period of the 'troubles' in Northern Ireland (1969 to 1998) the Supreme Court was reluctant to authorize extradition because of fears that in Northern Ireland the suspect might be mistreated by police or prison officers or not receive a fair trial. At least two of the Justices were inclined to the

view that members of the IRA should not be extradited because their actions (even murders) qualified as 'political offences'. Judge Brian Walsh veered in that direction when refusing to extradite Dermot Finucane in 1990. Once the European Arrest Warrant system was introduced in 2002, extradition problems faded away, but Brexit has meant that the UK is no longer able to make use of that system so problems may arise again in the future. Politically motivated violence is still a frequent occurrence in Northern Ireland, as evidenced by the 'New' IRA's murder of a young female journalist, Lyra McKee, in Derry in 2019.



ON JUDGES

On Judges Saturday 27 February 1875, page 7 Judges are men with shaven faces and short legs. In ordinary life they wear striped trousers, black vests, and tall hats. They drive in carriages, and lean back, and poke their hats over their eyes, and turn their heads slowly from side to side. This makes them look like waxworks. A man once told me that the difference between judges and waxworks is, that judges can bite and waxworks can't. When judges aren't in ordinary life, they are either in court or in bed. As no one ever saw a judge in bed, there is no use in saying anything more about that part of their lives. When they are in court they wear large wigs, and white neckties like the capstrings of a monthly nurse, long sleeves, and long black or red gowns. A man once told me that the reason why judges wear all these things is to hide as much of themselves as possible, for the less we see of judges the better.

Judges are made of the wisest and most honorable men that can be bought for ready money. It is sometimes hard to get men with much honor for judges. The government have then to try elsewhere for men. Sometimes they have to choose pensioners, or orators, or politicians, and sometimes they select a patriot or a man with religion. At other times they take men who have learned brass instruments, and are such clever musicians that, although they have been playing one tune all their lives, they can, at a moment's notice, play any other. This great talent, which is so much admired, is called "versatility," and, if concealed up to the last moment, always produces the most amusing results. One great danger besets in spite they often order the unfortunate prisoner to be hanged. When they order man to be hanged, they put a large black cap on, and take out their handkerchiefs, and rub their eyes. This is done to make the people in the court moan, and the reporters use the words "deeply affected."

Sometimes judges grow very fond of becoming famous, just like prize-fighters or rope-dancers. They then make long speeches about all they knew and could tell if they liked, and all the learning they have

those clover musicians, and this is, when they commence to play the new tune they think they can never give it long enough or loud enough, and people get very much annoyed with it, and say unfeeling things about the musicians.

A few men are now and then made judges although they possess no such ability. This is done for the sake of contrast, and the way that the others shouldn't completely forget themselves, and become worse than ever by the force of each other's example. As soon as one of these men is made a judge, all the others grow very unhappy, and make up their minds to do a lot of rash things, such as paying their debts, and being just and fearing not, and several other weak-minded things. Judges sit in courts and try cases when they are in good humour, and when they are in bad humour they got jurors to try the case for them. Sometimes when the jurors are not quick in trying the cases, the judges order them to be imprisoned and kept without food for a while, because imprisonment and fasting sharpen the mind, and make it more lively in the finding out of guilt. They are often so displeased with the jurors that they won't even give the jurors characters, but send them out on the world without any honourable means of earning a livelihood.

When a man is tried for murder, and the jurors say they think he did the deed, the judges become awfully affected, and grow very sorry for having anything to do with the matter, even for ever so much a year. They suffer so much in their feelings from being connected with the thing at all, that forgotten which would be most useful to other people, and such like things. Then they say that the men who make the laws don't know anything about the matter, and ought to be sent about their business, and a couple of respectable earls and a marquis ought to get the contract for making all the laws. This causes everyone to admire such judges very much, and walk down to the court when they are going to speak.



The Anglo-American LAWYER

MAGAZINE



SPECIAL MESSAGE TO THE PRESIDENT OF THE UNITED STATES OF AMERICA JOE BIDEN

Dear Mr. President,

The invention of hypersonic missiles by the perceived enemies of the United States would be a huge national security concern. The speed with which they are delivered will wreak havoc resulting in breaking the constitutional order of the United States which it had cherished for two centuries. The attack on the U.S. satellite communication facilities in space could be the first strike option against the U.S. It could cut off the President of the U.S from the Nation, from the Military Commanders and the civil government as a result you will not be able to communicate with U.S allies in Europe/ NATO, Israel, Japan, India, Australia, New Zealand, and elsewhere. Your position as Commander-In-Chief of the U.S forces would be meaningless if you are unable to communicate with the Nation. The key allies of the U.S., would lose confidence in your ability to wage a coordinated battle against the perceived enemies. The authoritarian regimes in the world would feel triumphant and forge new strategic alliances.

We, *The Anglo-American Lawyer Magazine*, call upon you to immediately appoint a Presidential Commission to inquire into the efficacy of the U.S constitution and whether it should be suitably revised or amended to deal with the new threats. This will ensure that the security of the strategic allies of the U.S too is guaranteed in case such an eventuality takes place.

God Bless America

OVER TO YOU MR. PRESIDENT

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